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CITATIONS

Cases:

In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 559

HANS PETE MORTENSEN AND LORRAINE MORTENSEN,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The majority and dissenting opinions in the circuit court of appeals (R. 69–74) are not yet reported.

JURISDICTION

The judgment of the circuit court of appeals was entered November 23, 1943 (R. 74–75). The petition for a writ of certiorari was filed on December 27, 1943, and was granted January 31, 1944 (R. 76). The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the circuit court of appeals improperly denied petitioners' application for leave to settle and file their bill of exceptions out of time.

2. Whether, having transported two prostitutes from Grand Island, Nebraska, to Salt Lake City, Utah, petitioners, in returning them to Grand Island, transported them in interstate commerce within the meaning of the Mann Act.

3. Whether the evidence permitted the jury to find that in returning their employee-prostitutes from a vacation point to their house of prostitution, petitioners transported the girls for the purpose of prostitution.

4. Whether the joining conjunctively of the various modes of accomplishing the offense proscribed by Section 2 of the Mann Act rendered the indictment duplicitous, and whether the facts alleged in the indictment sufficiently informed petitioners of the charges against them.

STATUTE AND RULES INVOLVED

Sections 1 and 2 of the Act of June 25, 1910, c. 395, 36 Stat. 825 (18 U. S. C. 397, 398), known as the Mann Act, provide in part:

> SEC. 1. The term "interstate commerce," as used in this Act, shall include transportation from any State or Territory or the District of Columbia to any other State or Territory or the District of Columbia, * * *.

SEC. 2. Any person who shall knowingly transport or cause to be transported, or aid or assist in obtaining transportation for, or in transporting, in interstate or foreign commerce, or in any Territory or in the District of Columbia, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice; * * * shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding five thousand dollars, or by imprisonment of not more than five years, or by both such fine and imprisonment, in the discretion of the court.

Rules IV, VII, and IX of the Criminal Appeals Rules promulgated by this Court May 7, 1934 (292 U. S. 663–665) provide:

RULE IV. The clerk of the trial court shall immediately forward the duplicate notice of appeal to the clerk of the appellate court, together with a statement from the docket entries in the case substantially as provided in the form hereto annexed.

From the time of the filing with its clerk of the duplicate notice of appeal, the appellate court shall, subject to these rules, have supervision and control of the proceedings on the appeal, including the proceed-

ings relating to the preparation of the record on appeal.

* * * * *

RULE VII. The clerk of the trial court shall immediately notify the trial judge of the filing of the notice of appeal, and thereupon the trial judge shall at once direct the appellant or his attorney, and the United States Attorney, to appear before him and shall give such directions as may be appropriate with respect to the preparation of the record on appeal, including directions for the purpose of making promptly available all necessary transcripts of testimony and proceedings. The action and directions contemplated by this Rule may be had and given by the trial judge at any place he may designate within the judicial district where the conviction was had.

* * * * *

RULE IX. In cases other than those described in Rule VIII, the appellant, within thirty (30) days after the taking of the appeal, or within such further time as within said period of thirty days may be fixed by the trial judge, shall procure to be settled, and shall file with the clerk of the court in which the case was tried, a bill of exceptions setting forth the proceedings upon which the appellant wishes to rely in addition to those shown by the clerk's record as described in Rule VIII. Within the same time, the appellant shall file with the clerk of the trial court an assignment of the errors of which appellant complains. The bill of exceptions shall be settled by the

trial judge as promptly as possible, and he shall give no extension of time that is not required in the interest of justice.

* * * * *

STATEMENT

On January 28, 1941, petitioners, who are husband and wife (R. 52), were indicted in the United States District Court for the District of Nebraska in two counts charging violations of Section 2 of the Mann Act (*supra*, p. 3), in that, on September 4, 1940, they transported and caused to be transported and aided and assisted in obtaining transportation for and in transporting two girls in interstate commerce from Salt Lake City, Utah, to Grand Island, Nebraska, for the purpose of prostitution and debauchery and with intent to induce, entice and compel the girls to give themselves up to debauchery and to engage in immoral practices (R. 1–2).

After petitioners' preliminary motions had been denied,[1] the case came to trial.

[1] On March 3, 1941, petitioners filed a plea in abatement and motion to quash (R. 2–5) in which they alleged that the facts in the knowledge and possession of the Government did not constitute transportation in interstate commerce within the meaning of the Mann Act; that the indictment did not reflect the facts furnished the grand jury by the women alleged to have been transported by petitioners and that there was a fatal variance between the facts in the knowledge of the Government and the facts alleged in the indictment; that the true facts would require a verdict in favor of petitioners; that if the grand jury was not properly informed as to the law or facts the indictment was returned under a mistake of law and fact and should be quashed; that various facts recited in the moving papers showed that petitioners did not

The evidence adduced at the trial consisted primarily of the testimony of the girls McMahon and Smith, supplemented by the testimony of a maid employed by petitioners, an F. B. I. agent, and a local police official. The testimony, as shown by the reporter's transcript lodged by petitioners with the Clerk of this Court, may be summarized as follows:[2]

For at least one year prior to August 1940 and for at least 1½ years thereafter petitioners occupied the second floor of a building on the edge of the business district in Grand Island, Nebraska (Tr. 10). The premises contained some twelve or fifteen rooms (Tr. 10, 60), which petitioners operated as a rooming house and house of prostitution under the name "Nifty Rooms" (Tr. 9, 61, 64–65, 68, 80).

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have an unlawful intent and did not transport the women in interstate commerce. On March 17 the Government filed a demurrer to the plea in abatement and motion to quash on various grounds (R. 5–6). On April 11, 1941, petitioners filed a second motion to quash (R. 8) in which the allegations previously made were reiterated. The Government then filed an answer to the plea in abatement and the two motions to quash (R. 8–9) in which it incorporated by reference the allegations contained in its earlier demurrer and in which it also denied the allegations in the plea and the motions. On April 16, 1941, the court overruled the Government's demurrer to the plea in abatement, but also overruled petitioners' motions and the plea.

[2] The transcript is in two volumes, one containing the testimony and the other the instructions to the jury. For convenience, the former is referred to as "Tr." and the latter as "2 Tr."; the printed record is referred to as "R."

In 1939 the girls McMahon and Smith started working for petitioners as prostitutes (Tr. 22, 31, 33, 54, 68). Each had a separate room in which she lived and carried on her activities (Tr. 8, 11, 38, 70). They paid the petitioners for their room and board, and also half the proceeds of the prostitution (Tr. 21–22, 24, 70–71, 77). In 1940 petitioners planned a trip from Nebraska to Utah to visit Mrs. Mortensen's relatives, and at the girls' request they agreed to take them along (Tr. 35–37, 39, 49, 73–75).

In the latter part of August 1940 petitioners and the two girls left Grand Island in petitioners' automobile with Mr. Mortensen driving (Tr. 12, 76). They proceeded from the State of Nebraska to Yellowstone National Park (Tr. 13), and from there to Salt Lake City, Utah (Tr. 14, 76). In Salt Lake City all four stayed at a tourist camp for 5 or 6 days, during which they visited Mrs. Mortensen's parents (Tr. 14, 37, 75). The girls, in addition, "went to shows and around in the parks" (Tr. 14). From Salt Lake City they proceeded to return in petitioners' car to Grand Island, Nebraska, stopping for one night in a small town in Colorado (Tr. 15, 16). When they reached Grand Island petitioners drove directly to the "Nifty Rooms," where the parties retired to their respective rooms (Tr. 16–17, 63, 76–77). The girl Smith resumed her work for petitioners as a prostitute on the following day (Tr. 77), while the

girl McMahon did not resume prostitution for a week or ten days because of illness (Tr. 34, 48–49; see also Tr. 20–21). Both girls continued to work as prostitutes for petitioners for a year or more after they returned from Salt Lake City (Tr. 29, 38, 54, 64, 77). The girls paid their own living expenses on the trip, but petitioners paid the expenses of transportation (Tr. 12, 15, 40, 74–75).

No acts of prostitution occurred on the trip (Tr. 39, 47), nor was there any discussion of prostitution in the course of the journey (Tr. 40, 56). Both girls testified that they took the trip for a vacation (Tr. 45), that in the course of the trip they had not given any consideration to their work as prostitutes or made any plans for abandoning their work for petitioners as prostitutes (Tr. 51, 57–58, 75, 80–81, 86). Both girls claimed Grand Island was their residence (Tr. 56–57, 88), and Smith testified that she boarded her child with a family in Grand Island (Tr. 85, 87–88).

At the close of the Government's case, petitioners' "Motion to dismiss the action, and Discharge the jury" was denied (Tr. 105–107, 109–110). The court charged the jury, as requested by petitioners, that purpose was an essential ingredient of the crime and that if the jury found that the transportation from Salt Lake City to Grand Island was planned with no immoral purpose, no crime was committed (2 Tr. 10, 12–13, 18). The court further instructed the jury, at

petitioners' request, that to convict, the jury must find that the Government had proved beyond a reasonable doubt that petitioners transported the two girls from Salt Lake City, Utah, to Grand Island, Nebraska, for the purpose of prostitution and debauchery (2 Tr. 13, 20). The court refused to instruct the jury to acquit if it found that the trip in question commenced and terminated in Grand Island, Nebraska (*id.* 19).

The jury returned a verdict of guilty on both counts (R. 11–12). Petitioners' motion for a new trial was denied (R. 23–24), and on January 15, 1943, they were sentenced to imprisonment for three years on each count, the sentences to run concurrently (R. 13–14). Petitioner Hans Pete Mortensen was, in addition, fined $500 on each count (R. 13).

On January 18, 1943, petitioners filed a notice of appeal (R. 27) and on February 4 an amended notice of appeal (R. 28–29).[3] Under Rule IX of the Criminal Appeals Rules, petitioners were required within thirty days after January 18 to file a bill of exceptions or obtain from the court additional time for such filing. On January 22, the trial judge advised petitioners' attorney by letter of the duty of the court, under Rule VII of the Criminal Appeals Rules, to require the appearance of counsel for directions as to the preparation of the record on appeal. In the letter the

[3] Petitioners were released from custody on bail pending disposition of their appeals (R. 23–27).

judge stated: "Under the rule, the meeting must be prompt, and I therefore wish that you would advise me what time will best suit your convenience and I will set the matter accordingly and advise the United States Attorney". (R. 41–42.) In response to the judge's letter, petitioners' counsel asked for information as to the time within which the transcript and pleadings had to be filed in the circuit court of appeals and suggested that the judge fix his own date for the appearance of counsel (R. 42–43). On February 1 the judge's secretary advised petitioners' counsel by letter (R. 43) that the judge was temporarily confined to a hospital with a cold and directed their attention to Rules VII and IX of the Criminal Appeals Rules, the letter stating where the Rules could be found in the U. S. C. A.

On February 23, not having heard further from petitioners' counsel (R. 44), the judge entered an order (R. 29) requiring counsel on both sides to appear before him on February 26 for directions with respect to preparation of the record. One of petitioners' attorneys appeared on that date (R. 51) but no action appears to have been taken at that time. On February 27, ten days after the expiration of the thirty days, petitioners filed a motion for an extension of time to settle and file a bill of exceptions (R. 38–39) on the ground that the stenographer had not yet prepared the transcript. This motion was denied on the same date, on the ground that no bill of exceptions had been

presented or settled and no extension of time granted during the period of thirty days following the filing of the notice of appeal (R. 39). Pursuant to Rule VIII of the Criminal Appeals Rules, the trial judge ordered that a transcript of the clerk's record of the proceedings be prepared, specifying the various items to be included, for use in the circuit court of appeals (R. 39–41).

Thereafter, on March 18, 1943, petitioners applied to the Circuit Court of Appeals for the Eighth Circuit for an order granting them "the right to have a Bill of Exceptions" and for additional time in which to settle and file it (R. 46–63). In the application petitioners alleged that neither the trial court nor petitioners' counsel had complied with Criminal Appeals Rule VII, in that the judge "did not at once" direct counsel to appear before him and counsel for petitioners "through oversight, inadvertence and mistake" failed to secure an extension of time in which to settle the bill of exceptions (R. 47, 48). The Government objected to the granting of the application principally on the ground that no sufficient cause was shown meriting relief by the court (R. 64–67). On March 24, 1943, the circuit court of appeals entered an order denying the application (R. 68).

When the court, with another division of judges sitting (R. 70), reached the case on the merits, it permitted petitioners to submit, but not file, a

copy of the reporter's transcript of the evidence[1] "in order that we might assure ourselves that no fundamental injustice had been done by the previous denial of an extension, and that we would not, because of the absence of a bill of exceptions, be affirming a conviction which was not properly an offense under the Act" (R. 70–71n). Petitioners asserted the same contentions before that court as they now urge in this Court. The court, in affirming the judgment, held, Judge Woodrough dissenting, that petitioners had transported the girls in interstate commerce within the meaning of Section 1 of the Mann Act, and that when petitioners transported the girls from Salt Lake City, Utah, to Grand Island, Nebraska, they intended that the girls should re-enter their house of prostitution; consequently, the transportation was for the purpose of prostitution and debauchery (R. 69–73).

SUMMARY OF ARGUMENT

I

Although petitioners' bill of exceptions was not filed in time, the court below examined the transcript of the record and passed upon the merits of the case before finally denying petitioners leave to file out of time. Accordingly we do not object to this Court's treating the transcript as a part of the record.

[1] This transcript has been lodged by petitioners' counsel with the Clerk of this Court.

II

There is no merit to petitioners' contention that a journey beginning in one state, going through other states, and returning to the original state is not interstate commerce. In any event the transportation in question here was from Utah to Nebraska.

III

The undisputed evidence that petitioners operated a house of prostitution in Nebraska, that they transported two of the girls who worked for them to Salt Lake City and return, and that the girls resumed their prostitution shortly after their return warrants the jury in inferring that a purpose of petitioners in bringing the girls back was that they should resume their prostitution. The fact that the object of the trip from Nebraska to Utah was to enjoy a vacation does not preclude the existence, on the journey back to Nebraska, of a purpose to return the girls to their work as prostitutes in petitioners' employ.

IV

The indictment is not duplicitous in charging in the conjunctive the various methods of committing the offense described in the statute. The use of "and" rather than "or" has been held necessary in order to avoid uncertainty and duplicity. The indictment was sufficiently definite to inform petitioners of the charge against them.

ARGUMENT

I

THE QUESTION AS TO THE TIMELINESS OF THE BILL OF EXCEPTIONS

The determination of the sufficiency of the Government's proof to show a violation of Section 2 of the Mann Act depends upon the presence before this Court of the evidence taken at the trial and the court's instructions to the jury. Yet as we have shown in the Statement, *supra*, pp. 9–10, no bill of exceptions was settled and filed during the period of thirty days following the filing of the Notice of Appeal, as required by Criminal Appeals Rule IX, and no extension of time was requested or granted during that period. The trial judge, thereafter, had no authority under Rule IX to grant petitioners' subsequent application for an extension of time,[5] and accordingly properly denied petitioners' untimely application for an extension (R. 38–39).

The circuit court of appeals had such authority, under Rule IV of the Criminal Appeals Rules.[6] The division of that court before which petitioners' application for additional time to prepare

[5] *Ray* v. *United States*, 301 U. S. 158, 162; *Long* v. *United States*, 90 F. (2d) 482, 483 (C. C. A. 9), certiorari denied, 302 U. S. 730; *Wainer* v. *United States*, 87 F. (2d) 77 (C. C. A. 7), certiorari denied, 300 U. S. 669.

[6] *Kay* v. *United States*, 303 U. S. 1, 9–10; *Forte* v. *United States*, 302 U. S. 220, 223; *Ray* v. *United States*, 301 U. S. 158, 164.

and file their bill of exceptions first came denied the application without opinion or explanation (R. 68). This ruling would appear to have been an exercise of "sound judicial discretion." *Ray* v. *United States,* 301 U. S. 158, 166. For the attention of petitioners' counsel had been called to Rule IX on February 1, over two weeks before the expiration of the thirty days, and in ample time for counsel at least to have requested an extension of time. Petitioners charge that the delay was due in part to the courtesy of the trial judge in requesting their counsel to set a time to suit his convenience instead of mandatorily fixing the date himself. But in the circumstances this is not an adequate excuse, since it was the primary responsibility of petitioners' counsel to make sure that the bill was filed in the proper time. Petitioners do not deny the negligence of their counsel, and unless the inexcusable failure of counsel to comply with the Rules is never to be charged to a criminal defendant, the denial of petitioners' application by the circuit court of appeals in the first instance cannot be deemed an abuse of discretion.

When the case subsequently came before another division of the circuit court of appeals for argument, the court allowed counsel to leave with it, but not to file, a transcript of the evidence in order that it "would not, because of the absence of a bill of exceptions, be affirming a conviction

which was not properly an offense under the Act" (R. 70–71n). The court then treated the case as if the transcript were before it, and sustained petitioner's conviction on the merits. Having reached the conclusion that there was no merit in petitioners' contention, and that the result would have been no different if a bill of exceptions had been allowed, the court refused to permit the transcript to be filed.

This course of proceeding indicates that the division of the court below which heard the argument[7] would have allowed the bill to be filed if it had been of the view that there was merit in petitioners' substantive contentions. It purported to exercise discretion on no other basis. Petitioners have properly presented to this Court the question as to the correctness of the ruling below disallowing the filing of the bill of exceptions (Pet. pp. 7, 10, 26–30). Inasmuch as the court below relied entirely on its views as to the merits of the case, it would be appropriate for this Court to reverse that ruling if it thought the decision below wrong on the merits. But it would be futile for this Court then to remand the case in order to permit the filing of the bill of exceptions, as the merits would already have been conclusively adjudicated. It would also be useless for this Court,

[7] We think the second division of the court to hear the case had power to treat petitioners' renewed request for permission to file the bill of exceptions as a motion for rehearing of the decision of the first division of the court.

without first considering the merits, to remand the case in order to permit the court below to allow the filing of the bill and the consideration of the case in that posture, inasmuch as the court below has already decided the case just as if the bill had been filed. In these peculiar circumstances, in order to avoid further fruitless litigation and delay in the determination of issues which must eventually be decided by this Court, we believe that this Court may appropriately treat the transcript now lodged with the Clerk as a part of the record, and we have no objection to its doing so.

II

IN TRANSPORTING THE GIRLS FROM SALT LAKE CITY, UTAH, TO GRAND ISLAND, NEBRASKA, PETITIONERS TRANSPORTED THEM IN INTERSTATE COMMERCE WITHIN THE MEANING OF SECTION 1 OF THE MANN ACT

Section 2 of the Mann Act applies to transportation "in interstate or foreign commerce." Section 1 provides:

> The term "interstate commerce," as used in this Act, shall include transportation from any State or Territory or the District of Columbia to any other State or Territory or the District of Columbia, * * *.

Petitioners contend that the Act does not apply to transportation passing through several states but beginning and ending in the same state. They

requested the court so to charge the jury, but the request was refused (R. 12).

The answer to petitioners' argument is twofold. In the first place, petitioners were charged with transporting the girls from Salt Lake City, Utah, to Grand Island, Nebraska. The evidence shows, and petitioners do not deny, that this transportation occurred. Nor do they deny that transportation from Utah to Nebraska is interstate commerce. Petitioners contend, however, that the journey must be viewed as a single round trip from Grand Island to Grand Island. The evidence does not show any such continuous travel as to constitute a single interstate movement. On the contrary, the parties stayed five to six days in Salt Lake City, and then drove directly back to Grand Island in two days. If a person travels to a particular place, stays for a few days, whether on business or pleasure, and then returns to his starting point, he has, in common parlance, made two trips, one out and one back.

But even if petitioners were correct in treating the vacation as a single journey, it would not aid them. This Court and others have repeatedly held that movement between points in the same state through another state is interstate commerce,* and petitioners do not seem to deny that this is a proper interpretation of the commerce

* *Missouri Pacific Railroad Company* v. *Stroud*, 267 U. S. 404; *Western Union Telegraph Company* v. *Speight*, 254 U. S. 17; *Hanley* v. *Kansas City Southern Railway Company*, 187 U. S. 617; *Michael* v. *United States*, 7 F. (2d) 865, 866

clause. Their argument apparently is that "interstate commerce" as used in the Mann Act must be more narrowly construed because Section 1 of that Act states that "'interstate commerce,' * * * shall include transportation from any State * * * to any other State."[9] But that language certainly does not require "interstate commerce" to be given less than its full constitutional meaning. In the first place, transportation from state A to state B is from one state to another state within the literal meaning of the statute, even though it be preceded or followed by transportation from state B to state A. Secondly, the history of the Act shows that Congress employed the term "interstate commerce" in its ordinary constitutional sense. See H. Rep. No. 47, pp. 1–5, and S. Rep. No. 886, pp. 1–2, 7–10, 61st Cong., 2d Sess.[10] And, if it be thought

(C. C. A. 7); *United States* v. *Yohn*, 280 Fed. 511 (C. C. A. 2); *United States* v. *Yohn*, 275 Fed. 232 (S. D. N. Y.); *United States* v. *Moynihan*, 258 Fed. 529 (C. C. A. 3); *United States* v. *Delaware, L. & W. R. Co.*, 152 Fed. 269 (C. C. S. D. N. Y.); *Roundtree* v. *Terrell*, 22 F. Supp. 297 (N. D. Tex.).

[9] The trial judge instructed the jury, on this phase of the case, that interstate commerce involved commerce "from one state to another" (2 Tr. 4). This instruction would seem to be in full conformity to the language of the statute.

[10] In *United States* v. *Burch*, 226 Fed. 974, 975 (N. D. Cal.), the Court stated with respect to this provision in the Mann Act:

"* * * I do not think Congress defined or intended to define the term "interstate commerce" in this section, but only to declare that the territories and the District of Columbia should be included in the term 'interstate,' as well as the various states."

that commerce "from any State * * * to any other State' 'is narrower than "interstate commerce," the use of the word "includes" shows that Section 1 of the Act is not to be taken as an "all-embracing definition." *Federal Land Bank* v. *Bismarck Co.*, 314 U. S. 95, 100; *Phelps Dodge Corp.* v. *Labor Board*, 313 U. S. 177, 189; *Helvering* v. *Morgan's Inc.*, 293 U. S. 121, 125.

Petitioner cites only *United States* v. *Wilson*, 266 Fed. 712 (E. D. Tenn.), which does hold the Mann Act inapplicable to a single train trip between points in the same state but passing through another state.[11] But, as was said in *United States* v. *Winkler*, 299 Fed. 832, 834 (W. D. Tex.), the *Wilson* case "seems to stand alone, without authority to sustain it, and out of harmony with all other cases upon the same subject." For inconsistent cases under the Mann Act, see *Burgess* v. *United States*, 294 Fed. 1002 (App. D. C.); *Corbett* v. *United States*, 299 Fed. 27 (C. C. A. 9); *United States* v. *Oriolo*, 49 F. Supp. 226 (E. D. Pa.); *Ghadiali* v. *United States*, 17 F. (2d) 236, 237–238 (C. C. A. 9), certiorari denied, 274 U. S. 747. For inconsistent cases under the Motor Vehicle Theft Act (18 U. S. C. 408), which contains the same definition of interstate commerce, see

[11] It should be noted that in the *Wilson* case there was an uninterrupted, single "through transportation" between points in the same state, and that the passage through the second state could be regarded as fortuitous or incidental. This cannot be said of the interstate features of the transportation in the case at bar.

Hughes v. *United States*, 4 F. (2d) 387 (C. C. A. 8), certiorari denied, 268 U. S. 692; *United States* v. *Winkler*, *supra*. Compare *United States* v. *Delaware, L. & W. R. Co.*, 152 Fed. 269 (C. C. S. D. N. Y), decided under the Elkins Act (49 U. S. C., Sec. 41).

III

THE EVIDENCE WAS SUFFICIENT TO WARRANT THE JURY'S FINDING THAT PETITIONERS TRANSPORTED THE GIRLS FOR THE PURPOSE OF PROSTITUTION

The prohibitions of the Mann Act apply to persons who transport girls in interstate commerce "for the purpose of prostitution or debauchery or for any other immoral purpose." Immoral conduct on a journey or at its conclusion is not sufficient to violate the Act unless the trip is taken for that purpose.[12] Nor is it sufficient that the parties merely contemplate immoral conduct at the end of the journey if the necessary purpose is lacking.[13] But the immoral purpose need not be the sole object of the journey; the additional presence of a legitimate purpose is immaterial, if one of the ob-

[12] *United States* v. *Grace*, 73 F. (2d) 294 (C. C. A. 2); *Sloan* v. *United States*, 287 Fed. 91 (C. C. A. 8); *Fisher* v. *United States*, 266 Fed. 667 (C. C. A. 4); *Van Pelt* v. *United States*, 240 Fed. 346 (C. C. A. 4); *Hunter* v. *United States*, 45 F. (2d) 55 (C. C. A. 4); *Welsch* v. *United States*, 220 Fed. 764 (C. C. A. 4); *Alpert* v. *United States*, 12 F. (2d) 352 (C. C. A. 2); *Yoder* v. *United States*, 80 Fed. (2d) 665 (C. C. A. 10).

[13] *Hansen* v. *Haff*, 291 U. S. 559; *Caminetti* v. *United States*, 242 U. S. 470, 491; *Sloan* v. *United States*, *supra*; *Van Pelt* v. *United States*, *supra*; *Thorn* v. *United States*, 278 Fed. 932 (C. C. A. 8).

jects of the transportation falls within the statutory bar.[14] And it is elementary that in such cases the purpose of the defendant may be inferred by a jury from his conduct.[15]

The undisputed evidence showed that for some time prior to the transportation in question petitioners jointly operated a house of prostitution and that the girls worked for them as prostitutes, turning over to them one-half of the proceeds. In August 1940, petitioners transported the girls to Salt Lake City for a vacation, intending at that time to return them to their house of prostitution upon completion of the vacation.[16] In accord with this intention, when petitioners transported the girls back to Grand Island, they took

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[14] Thus, in *Ghadiali* v. *United States*, 17 F. (2d) 236, 237-238 (C. C. A. 9), certiorari denied, 274 U. S. 747, the court held the Act applicable to a man who transported a girl so that she could both act as his secretary and as his mistress. To the same effect, see *Carey* v. *United States*, 265 Fed. 515, 517 (C. C. A. 8); *Van Pelt* v. *United States*, 240 Fed. 346, 349 (C. C. A. 4); *Yoder* v. *United States*, 80 F. (2d) 665, 672 (C. C. A. 10); *Aplin* v. *United States*, 41 F. (2d) 495, 496 (C. C. A. 9).

[15] *Ghadiali* v. *United States*, *supra*; *United States* v. *Reginelli*, 133 F. (2d) 595 (C. C. A. 3), certiorari denied, 318 U. S. 783; *Neff* v. *United States*, 105 F. (2d) 688, 691 (C. C. A. 8); *Aplin* v. *United States*, *supra*. In the last case cited the court stated, "Purpose or intent is generally proved by circumstantial evidence, and may be so proved under all the authorities.

[16] Petitioners do not contend that the vacation was anything more than an interlude in their operation of the brothel and the work of the girls as prostitutes. The concept of "vacation" itself implies that the vacationer is to resume his former activities upon his return (see R. 80-81, 58).

them directly to their house of prostitution, and the girls resumed prostitution for petitioners' profit.

The question is whether, on these facts, the jury could properly infer that a purpose of the petitioners in transporting the girls back to Grand Island was to enable them to resume their activities as prostitutes.

The issue was properly presented to the jury by the court's charge, of which petitioners do not complain. Indeed, the court gave petitioners' requested instruction on the point. The court charged that petitioners should be acquitted if the jury found that the transportation from Salt Lake City to Grand Island "* * * was without any plan, purpose, or intent that the said girls would engage in prostitution or debauchery and that upon their return no such plan was thereafter formed before entering the State of Nebraska * * *" (2 Tr. 10). On petitioners' request, the court gave two additional instructions, including a charge to acquit "if the journey was planned with no immoral purpose at the time," and the statement that "it is the immoral purpose which renders interstate commerce criminal." [17]

[17] The original charge was as follows (2 Tr. 10):

"If you find that the charge in the indictment, that the transportation of the girls, as named, was from the city of Salt Lake City, Utah, to the city of Grand Island, Nebraska, was without any plan, purpose, or intent that the said girls would engage in prostitution or debauchery and that upon their return no such plan was thereafter formed before en-

The petitioners did not testify and there is no direct evidence as to what was in their minds on the trip back to Grand Island. But it cannot be and is not denied that they anticipated or knew that the girls were to go back to work as prostitutes. Inasmuch as they employed the girls in their own brothel and shared in the proceeds of the prostitution, we think that the jury could properly infer that at least one purpose of petitioners in transporting the girls back from Salt Lake City was to enable them to resume their im-

tering the State of Nebraska, then no crime was committed and you should acquit the defendant. But on the other hand, if at the time such journey was completed [*sic*], or any time before or any time thereafter before the State of Nebraska had been entered or at the time of the entry of the State of Nebraska, such a purpose and plan and intent was formed, then the crime was committed and in such case if you find beyond a reasonable doubt you should convict the defendant."

Instructions requested by petitioners, as given by the court, were as follows (2 Tr. 12–13, 18, 20):

"Instruction No. 1 requested. The jury is instructed that the United States Code makes the intent and purpose an element of the crime, and if the journey was planned with no immoral purpose at the time, no crime was committed, no matter what may have occurred thereafter. It is the immoral purpose which renders interstate commerce criminal. If you find from the evidence that the journey in this case was planned with no immoral purpose and with no intent and purpose to induce, entice and compel the said girls, named in the indictment, to give themselves up to debauchery and engage in immoral practices, then you shall find the defendants and each of them not guilty on each count of the indictment.

"Instruction No. 2 requested by the defendants. You are instructed that if you find from the evidence that the Gov-

moral conduct, which they did.[18] It is of course the function of the jury and not of the reviewing court to draw inferences of fact from the evidence.[18] See p. 22, n. 15, *supra*. Cf. *National Labor Relations Board* v. *Nevada Consolidated Copper Corp.*, 316 U. S. 105, and cases there cited.

The fact that the transportation was a part of a trip undertaken as a vacation does not negative the existence of such a purpose. If a person takes a vacation from an ordinary employment, one of the purposes of his return trip would normally be to go back to work; indeed that is often the main reason. And if he was taken on the vacation by his employer, it would be fair to infer that a purpose of the employer in bringing him back was that he might resume his work. This assumption is no less appropriate when the business activity to be resumed is prostitution, as it is here.

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ernment has failed to prove beyond a reasonable doubt that the defendants transported the two women, named in the indictment, from Salt Lake City, Utah, to Grand Island, Nebraska, on or about September 4, 1940, for the purpose of prostitution and debauchery; or that the Government failed to prove beyond a reasonable doubt that on or about September 4, 1940, the defendants or either of them had an intent or purpose to entice, induce, or compel said women, named in the indictment, or either of them, to give themselves up to debauchery or prostitution and to engage in immoral practices, and which intent or purposes was not formed before they entered the State of Nebraska, then you shall find the defendants, and each of them, not guilty on each of the counts of the indictment."

[18] The court below apparently thought this conclusion obvious, even apart from the jury's verdict (R. 71).

Petitioners argue (Br. pp. 26, 28) that the immoral intention must have existed before the conclusion of the journey. This can be conceded, since an immoral purpose could not otherwise motivate the transportation. But the evidence to which we have referred permitted the jury to draw the inference that petitioners' purpose to bring the girls back to prostitution existed at the commencement of and during the trip from Utah to Nebraska—that they brought them back for the purpose of doing what in fact they did. The court presented this issue to the jury in the manner requested by petitioners. See p. 23, *supra*.

In several cases it has been held that transportation on the return portion of a round trip violated the Act even though the outgoing journey was lawful. *United States* v. *Oriolo*, 49 F. Supp. 226 (E. D. Pa.); *Corbett* v. *United States*, 29 Fed. 27 (C. C. A. 9); *Burgess* v. *United States*, 294 Fed. 1002 (App. D. C.).

In the *Oriolo* case the defendant took a prostitute who worked for him on a one-day outing from Philadelphia to Atlantic City and returned her to Philadelphia, where she again resorted to prostitution for him. On the way back the defendant told the girl that "she would have to resume prostitution in Philadelphia to enable him" to pay a fine which had been imposed upon him in Atlantic City. The Government's case was predicated on the return journey from Atlantic City to Philadelphia. In upholding the conviction,

the court held that the fact that the girl worked for the defendant as a prostitute both before and after the interstate journey and the defendant's statement to her in Atlantic City "present a picture from which a jury could properly infer that the defendant transported the woman over State boundaries in order that she might again work for him as a prostitute * * *." 49 F. Supp., at p. 227.

The *Corbett* case presents a somewhat similar situation involving, however, irregular immorality rather than commercialized prostitution. There the woman, who had been having immoral relations with the defendant in Boise, Idaho, went to Spokane, Washington, to visit her children. After an absence of a month she came back to Boise with money furnished by the defendant. The woman testified that "when she left Boise, she intended to return and resume her work as a waitress in a restaurant, and had left her effects in her room" (299 Fed., at p. 28). In affirming the conviction the Circuit Court of Appeals for the Ninth Circuit concluded (p. 29):

> It is plain that the trip made by Mrs. Bishop from Boise to Spokane was to see her children, and for no other purpose; but the trip from Spokane to Boise, made a month later, is the one described in the indictment, and is distinct from the journey to Spokane. Corbett gave Mrs. Bishop the money for the trip, which the evidence goes to show was taken in response to Cor-

bett's express request, and, in the light of circumstances surrounding the conduct of the two after her arrival at Boise, it was for the jury to say what the intention and purposes of Corbett were in the transportation.

The cases cited by petitioners are not inconsistent with these conclusions. They stand for the undisputed propositions with which we began our discussion (p. 21). They involved private immorality on or after journeys taken for legitimate purposes; persons who had previously engaged in illicit relations continued to do so on trips to visit relatives,[19] trips taken for business reasons,[20] or a trip taken to await the birth of a child.[21]

Hansen v. *Haff*, 291 U. S. 559, which approves these authorities, is of the same character. In that case a woman who had lived in this country working as a domestic and who was engaging in illicit relations with a married man visited her family in Europe travelling with her paramour. She returned to this country with him, intending to resume her former occupation and ways. The Court held that the mere contemplation of sexual intercourse did not make that the purpose of her reentry into this country within the meaning of

[19] *Sloan* v. *United States*, 287 Fed. 91 (C. C. A. 8); *Fisher* v. *United States*, 266 Fed. 667 (C. C. A. 4); *Welsch* v. *United States*, 220 Fed. 764 (C. C. A. 4).

[20] *Yoder* v. *United States*, 80 F. (2d) 665, 669–670 (C. C. A. 10); *Alpert* v. *United States*, 12 F. (2d) 352 (C. C. A. 2).

[21] *Van Pelt* v. *United States*, 240 Fed. 346 (C. C. A. 4).

the Immigration Act of 1917 (8 U. S. C. § 155). Her intention was "to resume her employment as a domestic" (291 U. S., at 562). The decision as to the immoral purpose of her entry would undoubtedly have been different if her intent had been to resume employment as a prostitute (Cf. *Lapina* v. *Williams*, 232 U. S. 78; *Ex parte Pouliot*, 196 Fed. 437 (E. D. Wash.)); the case would then have been comparable to the situation here.

IV

THE INDICTMENT IS NOT DEFECTIVE

Petitioners attack the indictment in two respects. They contend (Br. 13–17) it is duplicitous because it charges that petitioners transported, caused to be transported, and aided and assisted in obtaining transportation, and in transporting the women in question (Br. 13). This contention is patently without merit. As this Court said in *Crain* v. *United States*, 162 U. S. 625, 636:

> We perceive no sound reason why the doing of the prohibited thing, in each and all of the prohibited modes, may not be charged in one count, so that there may be a verdict of guilty upon proof that the accused had done any one of the things constituting a substantive crime under the statute.

To the same effect, see *Blain* v. *United States*, 22 F. (2d) 393 (C. C. A. 8); *United States* v. *Malaga*, 57 F. (2d) 822, 825 (C. C. A. 1); *United States* v.

Delaware, L. & W. R. Co., 152 Fed. 269 (C. C. S. D. N. Y.). The fact that the statutory language is in the disjunctive furnishes no support for petitioners' assertion (Br. 13–17) that the indictment may not state the elements of the statute conjunctively. *Poffenbarger* v. *United States*, 20 F. (2d) 42, 43–44 (C. C. A. 8); *O'Neill* v. *United States*, 19 F. (2d) 322, 324 (C. C. A. 8); *Ackley* v. *United States*, 200 Fed. 217, 221 (C. C. A. 8); *Pines* v. *United States*, 123 F. (2d) 825, 828–829 (C. C. A. 8); *Troutman* v. *United States*, 100 F. (2d) 628, 631 (C. C. A. 10). Indeed the courts have held that in such situations the use of "and" instead of "or" is necessary to avoid uncertainty and duplicity. See *Poffenbarger* v. *United States*, *O'Neill* v. *United States*, and *Ackley* v. *United States*, all *supra*. Petitioners apparently concede that this is the usual rule,[22] but they contend that it can only be applied "when there is no inconsistency between any of the various ways it is alleged that the defendant employed to commit the offense" (Br. p. 18). But there is no inconsistency between the various acts charged in the

[22] Petitioners state in their brief (p. 18):

"We are familiar with the rule of law which has been applied in numerous cases, and that is, that an indictment can follow the language of the statute and may contain a number of ways in which an offense could be committed, if the different ways are connected by the conjunctive "and" and not the disjunctive "or," but it is our contention that such a course of procedure can be followed legally, only when there is no inconsistency between any of the various ways it is alleged that the defendant employed to commit the offense."

indictment, and petitioners have pointed to none. The evidence shows that petitioners (a) transported the girls, (b) caused them to be transported, (c) aided and assisted them in obtaining transportation, and (d) aided and assisted in transporting them. Each of these offenses may be found in the same conduct, but they are not inconsistent.

Petitioners also contend that the indictment is so indefinite as not to inform them as to the precise charge attempted to be made against them (Br. 17–19). To the contrary, the indictment follows closely the language of the statute, fixes the date of the transportation, specifies the initial and terminal points of the transportation and the purpose for which the women were transported. Cf. *United States* v. *Lepowitch*, 318 U. S. 702, 704; *Potter* v. *United States*, 155 U. S. 438, 444; *Hagner* v. *United States*, 285 U. S. 427, 431; *Hughes* v. *United States*, 114 F. (2d) 285, 288 (C. C. A. 6). If petitioners desired greater specificity of factual detail properly to prepare their defense, they could have moved for a bill of particulars. Not only did they fail to do so, but their plea in abatement and motion to quash (R. 4–5) and their offer to produce facts (R. 6–7) showed that they were fully familiar with the details of the offense charged long in advance of the trial; indeed these documents recite substantially all of the evidence that was brought out at the trial. Obviously their contention that they were

not informed of the charge against them is without foundation.

CONCLUSION

For the above reasons it is respectfully submitted that the judgment of the court below should be affirmed.

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MARCH 1944.

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SUPREME COURT OF THE UNITED STATES.

No. 559.—October Term, 1943.

Hans Pete Mortensen and Lorraine Mortensen, Petitioners, *vs.* The United States of America.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

[May 15, 1944.]

Mr. Justice Murphy delivered the opinion of the Court.

We granted certiorari in this case to review the judgment of the Circuit Court of Appeals affirming the conviction of petitioners under Section 2 of the White Slave Traffic Act, popularly known as the Mann Act.[1] 139 F. 2d 967.

Following their conviction by the jury in the District Court, petitioners filed a notice of appeal to the Circuit Court of Appeals. However, they failed to file a timely bill of exceptions in the District Court. Thereafter they applied to the Circuit Court of Appeals for an order granting them "the right to have a Bill of Exceptions" and for additional time in which to settle and file it. This application was denied without opinion or explanation. When the case subsequently came before another division of judges of that court for argument on the merits, petitioners renewed their request for permission to file a bill. This was, in effect, a motion for rehearing of the decision of the first division of judges of the court. Counsel was then allowed by the court to leave with it, but not to file, a copy of the reporter's transcript of the evidence "in order that we might assure ourselves that no fundamental injustice had been done by the previous denial of an extension and that we would not, because of the absence of a bill of exceptions, be affirming a conviction which was not properly an offense under the Act." 139 F. 2d at 969, note 1. The court then treated the case as though the transcript were properly before it and sustained petitioners' conviction on the merits. Having reached the conclusion that there was no merit in petitioners' contentions and

[1] Act of June 25, 1910, § 2, 36 Stat. 825, 18 U. S. C. § 398.

that the result would have been the same had a bill of exceptions been filed, the court refused to permit the "purported" transcript to be filed. No other reason was given for this refusal.

Petitioners have raised before us the propriety of the action of the court below, claiming that they thereby have been prevented from urging and arguing certain assignments of error which they wished to urge. It is clear from Rule IV of the Criminal Appeals Rules[2] that the Circuit Court of Appeals has the right to exercise sound judicial discretion in supervising and controlling the proceedings on appeal. *Ray* v. *United States*, 301 U. S. 158, 166-167; *Forte* v. *United States*, 302 U. S. 220, 223; *Kay* v. *United States*, 303 U. S. 1, 9-10; *Miller* v. *United States*, 317 U. S. 192, 199. This includes the right to grant or deny belated applications for permission to file bills of exceptions. And the court's action in the matter is not reviewable in this Court absent a clear abuse of discretion.

But under the peculiar circumstances of this case it is unnecessary to determine whether the court below abused its discretion in refusing to allow a bill to be filed. When that court examined the transcript of the evidence and conclusively adjudicated the merits, it accomplished in substance all that would have been achieved if the formality of filing the transcript had occurred and the court had then passed upon the merits. In order that petitioners shall not be unfairly deprived of the right to seek a review of that court's determination of the merits, we may consider the court's action as in effect having approved the filing of the transcript as a bill of exceptions. A copy of the transcript has been lodged with the Clerk of this Court and no question has been raised as to its correctness or completeness. In accordance with the Government's suggestion and in the exercise of our supervisory appellate power, we shall treat the transcript as a part of the record before us and consider the case on its merits.

The petitioners, man and wife, operated a house of prostitution in Grand Island, Nebraska. In 1940 they planned an automobile trip to Salt Lake City, Utah, in order to visit Mrs. Mortensen's parents. Two girls who were employed by petitioners as prostitutes asked to be taken along for a vacation and the Mortensens agreed to their request. They motored to Yellowstone National

[2] 292 U. S. 661, 663 18 U. S. C. A. following § 688.

Park and then on to Salt Lake City, where they all stayed at a tourist camp for four or five days. They visited Mrs. Mortensen's parents and, in addition, the girls "went to shows and around in the parks" and saw various other parts of the city. The four then returned in petitioners' automobile to Grand Island; on arrival they drove immediately to petitioners' house of ill fame and retired to their respective rooms. The following day one of the girls resumed her activities as a prostitute in petitioners' employ, while the other did not resume such activities for a week or ten days because of illness. Both girls continued to act as prostitutes for petitioners for a year or more after their return from Salt Lake City.

It is undisputed that this was purely a vacation trip, with the two girls paying their own living expenses and petitioners bearing the expenses of transportation. One of the girls had offered to help pay for the transportation, but petitioners refused on the ground that the cost would remain the same even if the girls did not accompany them. No acts of prostitution or other immorality occurred during the two-week trip and there was no discussion of such acts during the course of the journey. Both girls testified that during the trip they gave no consideration to their work as prostitutes and made no plans to abandon such activities. There was also uncontradicted evidence that the two girls were under no obligation or compulsion of any kind to return to Grand Island to work for petitioners. They were free at any time before, during or after the vacation excursion to leave petitioners' employ and engage in their own pursuits. Both girls claimed that Grand Island was their residence, one of them testifying that she boarded her child with a family in that city.

Petitioners were charged in two counts with violating Section 2 of the Mann Act in that they transported and caused to be transported, and aided and assisted in obtaining transportation for and in transporting, two girls in interstate commerce from Salt Lake City to Grand Island for the purpose of prostitution and debauchery, and with intent to induce, entice and compel the girls to give themselves up to debauchery and to engage in immoral practices. The jury was charged that purpose was an essential ingredient of the crime and that if the jury found that the transportation from Salt Lake City to Grand Island was planned with no immoral purpose, no crime was committed. The jury was also

told that, to convict, it must find that the Government had proved beyond a reasonable doubt that petitioners transported the girls from Salt Lake City to Grand Island for the purpose of prostitution and debauchery. The jury returned a verdict of guilty on both counts. This conviction was affirmed by the Circuit Court of Appeals under circumstances previously described.

The primary issue before us is whether there was any evidence from which the jury could rightly find that petitioners transported the girls from Salt Lake City to Grand Island for an immoral purpose in violation of the Mann Act.

The penalties of Section 2 of the Act are directed at those who knowingly transport in interstate commerce "any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice." The statute thus aims to penalize only those who use interstate commerce with a view toward accomplishing the unlawful purposes. To constitute a violation of the Act, it is essential that the interstate transportation have for its object or be the means of effecting or facilitating the proscribed activities. *Hansen* v. *Haff*, 291 U. S. 559, 563. An intention that the women or girls shall engage in the conduct outlawed by Section 2 must be found to exist before the conclusion of the interstate journey and must be the dominant motive of such interstate movement. And the transportation must be designed to bring about such result. Without that necessary intention and motivation, immoral conduct during or following the journey is insufficient to subject the transporter to the penalties of the Act.

Since the issue as to whether petitioners intended that the two girls should resume their immoral conduct on their return to Grand Island and transported them in interstate commerce for that purpose was submitted to the jury with appropriate instructions we would normally be precluded from reviewing or disturbing the inferences of fact drawn from the evidence by the jury. But we have never hesitated to examine a record to determine whether there was any competent and substantial evidence fairly tending to support the verdict. Cf. *Abrams* v. *United States*, 250 U. S. 616, 619. Our examination of the record in this case convinces us that there was a complete lack of relevant evidence

from which the jury could properly find or infer, beyond a reasonable doubt, that petitioners transported the girls in interstate commerce "for the purpose of prostitution or debauchery" within the meaning of the Mann Act.

It may be assumed that petitioners anticipated that the two girls would resume their activities as prostitutes upon their return to Grand Island. But we do not think it is fair or permissible under the evidence adduced to infer that this interstate vacation trip, or any part of it, was undertaken by petitioners for the purpose of, or as a means of effecting or facilitating, such activities. The sole purpose of the journey from beginning to end was to provide innocent recreation and a holiday for petitioners and the two girls. It was a complete break or interlude in the operation of petitioners' house of ill fame and was entirely disassociated therefrom. There was no evidence that any immoral acts occurred on the journey or that petitioners forced the girls against their will to return to Grand Island for immoral purposes. What Congress has outlawed by the Mann Act, however, is the use of interstate commerce as a calculated means for effectuating sexual immorality. In ordinary speech an interstate trip undertaken for an innocent vacation purpose constitutes the use of interstate commerce for that innocent purpose. Such a trip does not lose that meaning when viewed in light of a criminal statute outlawing interstate trips for immoral purposes.

The fact that the two girls actually resumed their immoral practices after their return to Grand Island does not, standing alone, operate to inject a retroactive illegal purpose into the return trip to Grand Island. Nor does it justify an arbitrary splitting of the round trip into two parts so as to permit an inference that the purpose of the drive to Salt Lake City was innocent while the purpose of the homeward journey to Grand Island was criminal. The return journey under the circumstances of this case cannot be considered apart from its integral relation with the innocent round trip as a whole. There is no evidence of any change in the purpose of the trip during its course. If innocent when it began it remained so until it ended. Guilt or innocence does not turn merely on the direction of travel during part of a trip not undertaken for immoral ends. If the return journey was illegal, so was the outgoing one since all intended, from the beginning, to end the journey where it began, at Grand Island. The outward leg

of the trip was interstate transportation. Yet it was not charged, and could not well be, that proof of this part of the trip was a violation of the Act. It differed in no respect from the other part, except in the direction of travel. That is not enough to make the first part innocent, the last part illegal. Criminal intent and purpose must be grounded on something less ingenious than that which is necessary to sustain a finding of such a purpose in making the return interstate journey to Grand Island. "People not of good moral character, like others, travel from place to place and change their residence. But to say that because they indulge in illegal or immoral acts, they travel for that purpose, is to emphasize that which is incidental and ignore what is of primary significance." *Hansen* v. *Haff*, *supra*, 563-564. Cf. *Ex parte Rocha*, 30 F. 2d 823.

An artificial and unrealistic view of the nature and purpose of the return journey to Grand Island is necessary to sustain this conviction. But we are unwilling to sanction the application of the Mann Act in a manner that is so manifestly unfair. Whatever their faults, petitioners are entitled to have just and fair treatment under the law and not to be punished for transporting girls in interstate commerce for a purpose wholly different from any of the purposes condemned by Congress.

We do not here question or reconsider any previous construction placed on the Act which may have led the federal government into areas of regulation not originally contemplated by Congress. But experience with the administration of the law admonishes us against adding another chapter of statutory construction and application which would have a similar effect and which would make possible even further justification of the fear expressed at the time of the adoption of the legislation that its broad provisions "are liable to furnish boundless opportunity to hold up and blackmail and make unnecessary trouble, without any corresponding benefits to society."[3]

To punish those who transport inmates of a house of prostitution on an innocent vacation trip in no way related to the practice of their commercial vice is consistent neither with the purpose nor with the language of the Act. Congress was attempting primarily to eliminate the "white slave" business which uses inter-

[3] 45 Cong. Rec. 1033.

state and foreign commerce as a means of procuring and distributing its victims and "to prevent panderers and procurers from compelling thousands of women and girls against their will and desire to enter and continue in a life of prostitution."[4] Such clearly was not the situation revealed by the facts of this case. To accomplish its purpose the statute enumerates the prohibited acts in broad language capable of application beyond that intended by the legislative framers. But even such broad language is conditioned upon the use of interstate transportation for the purpose of, or as a means of effecting or facilitating, the commission of the illegal acts. Here the interstate round trip had no such purpose and was in no way related to the subsequent immoralities in Grand Island. In short, we perceive no statutory purpose or language which prohibits petitioners under these circumstances from using interstate transportation for a vacation or for any other innocent purpose.

The judgment of the court below is

Reversed.

[4] H. Rep. No. 47, p. 10 (61st Cong., 2d Sess.). The same statement appears in S. Rep. No. 886, p. 10 (61st Cong., 2d Sess.). See also 45 Cong. Rec. 805, 821, 1035, 1037.

Mr. Chief Justice STONE,

Mr. Justice BLACK, Mr. Justice REED, Mr. Justice DOUGLAS and I think the judgment should be affirmed.

Courts have no more concern with the policy and wisdom of the Mann Act than of the Labor Relations Act or any other which Congress may constitutionally adopt. Those are matters for Congress to determine, not the courts. Congress, in enacting the Mann Act, declared in unmistakable terms that any person who should transport across state lines "any woman . . . for the purpose of prostitution . . . or with intent and purpose to induce . . . such woman to give herself to debauchery or to engage in any other immoral practice . . . shall be deemed guilty of a felony".

The fact that petitioners, who were engaged in an established business of operating a house of prostitution in Nebraska, took some of its women inmates on a transient and innocent vacation trip to other states, is in no way incompatible with the conclusion

that petitioners, in bringing them back to Nebraska, purpose and intended that they should resume there the practice of com mercial vice, which in fact they did promptly resume in pet tioners' establishment. The record is without evidence that the engaged, or intended to engage in any other activities in Nebraska or that anything other than the practice of their profession wa the object of their return. For this reason the case is controlle by *Lapina* v. *Williams*, 232 U. S. 78, rather than by *Hansen* v *Haff*, 291 U. S. 559. The jury was properly instructed, its ver dict is supported by ample evidence, and the two courts belo rightly sustained it.